vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.147 OF 1998

Acharya Donde Shikshan
Prasarak Mandal & Ors. ... Petitioners

V/s.

Shri Vitthal D. Kamble & Ors. ... Respondents

Mr.N.V. Bandiwadekar for Petitioners
Mr.A.P. Vanarse, AGP, for Respondent Nos.2 and 3

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 5, 2007**

ORAL JUDGMENT:

. The Petition challenges the order of the School Tribunal dated 1.11.1997 by which the school Tribunal has held that Respondent No.1 is entitled to be reinstated in service with full backwages.

2. Respondent No.1 was employed with Petitioner No.2 school. He was appointed as a Peon from 1979. After the academic year 1983-84 it was found that Respondent No.1 often remained absent from work. It appears that from 1.7.1990 to 9.7.1990 he worked during the days when the school was open and thereafter he refused to report for duty. The muster rolls indicate that Respondent No.1 signed the muster roll on 2.7.1990, 5.7.1990, 6.7.1990 and 7.7.1990. 1st July was a Sunday

while 3rd and 4th July were holidays for the school. 8th July was again a Sunday.

3. It appears that Respondent No.1 filed an appeal being Appeal No.137 of 1993 before the School Tribunal. This appeal was filed on 2.4.1993. Respondent No.1 contended in this appeal that the school had terminated his services from 1.7.1990. An application for condonation of delay in filing the appeal was also filed.

4. The Petitioners in reply to the appeal stated that Respondent No.1 had abandoned his services in the Petitioner’s school. It was also pleaded that there was a delay in filing the appeal and, therefore, the appeal ought to be dismissed.

5. By an order of 1.12.1997, the Tribunal condoned the delay in filing the appeal. The Tribunal held that the petitioners had prevented Respondent No.1 from joining duty after he enjoyed his medical leave from 1.7.1990 to 9.7.1990. The Tribunal has observed that the correspondence which the Petitioners had entered into with the Education Officer indicates that Respondent No.1 was not permitted to resume his duty. The Tribunal has held that Respondent No.1 was prevented

from signing the muster roll. On this basis, the Tribunal concluded that the services of Respondent No.1 had been wrongly terminated by the petitioners, in breach of the provisions of the MEPS Act. The Tribunal therefore, directed the school to reinstate Respondent No.1 and to pay backwages from 1.7.1990 onwards.

6. An extract of the muster roll is annexed to the petition as Exhibit B. However, the learned advocate for the petitioner is not aware whether this document was produced before the Tribunal. This document indicates that Respondent No.1 has signed the muster roll for 2.7.1990, 5.7.1990, 6.7.1990 and 7.7.1990. Therefore, his contention that he was not permitted to sign the muster on 1.7.1990 cannot be accepted. Assuming this document was not produced before the Tribunal, it would be necessary to ascertain whether there are any other documents which the petitioners had produced before the Tribunal to indicate that the Respondent had abandoned his services. The Tribunal has in its judgment observed that the Petitioners have produced on record the correspondence between themselves and the Education Officer which according to the Tribunal shows that the petitioners have prevented the Respondent No.1 from resuming duty. This correspondence is annexed to the Petition. However, a perusal of the

correspondence does not indicate that the findings of the Tribunal in that regard are correct. By a letter dated 4.6.1990, Respondent No.1 informed the Chairman, Education Committee, Zilla Parishad, Kolhapur that he had not been permitted to join duty with the school. The Education Officer called upon the Headmaster of the school to reply to his letter dated 24.6.1992 calling upon to furnish his explanation as to why Respondent No.1 was not permitted to join duty. By its letter dated 3.7.1992, the School informed the Education Officer that it was Respondent No.1 who had abandoned his service since 9.7.1992 and that the school had not terminated his services. It was pointed out that from 9.7.1992 till the date of writing the letter, Respondent No.1 had not reported for work. It appears that the Education Officer called upon Respondent No.1 to furnish certain particulars regarding his application for leave for the period for which he enjoyed leave. It appears that no intimation was sent by Respondent No.1 to the Education Officer. Therefore, it is difficult fathom as to how the Tribunal has found that Respondent No.1 was not permitted to join duty from 9.7.1990. The correspondence shows that the school had called upon the respondent to join duty by several letters after it found that the Respondent had remained absent from 9.7.1990. However, the respondent did not respond to

these letters or to the query raised by the Education Officer. The Tribunal was incorrect in concluding that the Petitioners had removed Respondent No.1 from service when in fact it was Respondent No.1 who had abandoned duty after 9.7.1990.

7. When the petition was admitted on 15.1.1998, the Petitioners were directed to reinstate the respondent during the pendency of this petition. Accordingly, the petitioners reinstated the respondent in service. An additional affidavit has been filed by the petitioners on 25.11.2006 of Gopal Krishnaji Kulkarni, President of the Petitioner No.1 society. This affidavit discloses that pursuant to the interim orders of this Court, Respondent No.1 was reinstated on 15.1.1998. However, he remained absent from 15.8.2001 continuously for more than 3 years without having his leave sanctioned. The petitioners, therefore, took steps in accordance with the MEPS Rules, more particularly under Rule 16 of the said Rules, under which Respondent No.1 was liable to be terminated from service for abandonment. The Education Officer has approved the action taken by the Petitioners.

8. In the circumstances, Rule made absolute. No order as to costs.